



Asian Domain Name Dispute Resolution Centre

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No. KR-1700163

Complainant: Samsung Electronics Co., Ltd

(Authorized Representative: Jeonghyun Kim, Hongseok Jang of
Bae, Kim & Lee LLC IP Group)

Respondent: TASIA TAMARA

Disputed Domain Name(s): promo-samsung.com

1. The Parties and Contested Domain Name

The Complainant is Samsung Electronics Co., Ltd of 129, Samsung-ro, Yeongtong-gu, Suwon-si, Gyeonggi-do, Republic of Korea. The Authorized Representative of Complainant is Jeonghyun Kim, Hongseok Jang (Bae, Kim & Lee LLC IP Group) of 11F, 343, Gangnam-daero, Seocho-gu, Seoul, Republic of Korea.

The Respondent is TASIA TAMARA of Jl. Perjuangan No. 80, Kebon Jeruk, West Jakarta City Special Capital Region

The domain name at issue is 'promo-samsung.com', registered with TUCOWS DOMAINS INC. of 96 Mowat Avenue, Toronto, Ontario, M6K 3M1, Canada.

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center (ADNDRC)[“Center”] on July 19, 2017, seeking for a transfer of the domain name in dispute.

On July 31, 2017, the Center sent an email to the TUCOWS DOMAINS INC. asking for the detailed data of the registrant. On July 31, 2017, the Registrar verified that TASIA TAMARA is the current registrant of the name and that Respondent is bound by the TUCOWS DOMAINS INC. registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the Centre's Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint. The proceedings commenced on August 2, 2017 and the due date for the Response was August 22, 2017. No Response was filed by the due date. Having received no response from Respondent, the Centre transmitted to the parties a Notification of Respondent Default on August 23, 2017.

On August 25, 2017, the Center appointed Mr. Ho-Hyun Nahm as the Sole Panelist in the administrative proceeding and with the consent for the appointment, impartiality and independence declared and confirmed by the Panelist, the Center, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Centre has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the

documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Center's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

3. Factual background

Complainant Samsung Electronics Co., Ltd. (hereinafter referred to as 'the "Complainant"') is the lawful rights holder of the mark 'SAMSUNG.' The Respondent is not using the disputed domain name at all.

4. Parties' Contentions

A. Complainant

The Complainant's contentions are summarized as follows:

- i) The disputed domain name is identical with or similar to the trademark or service mark owned by the Complainant, which may cause confusion,
- ii) The Respondent has no right or lawful interest in the disputed domain name, and
- iii) The Respondent owns the disputed domain name for unlawful purposes.

B. Respondent

Respondent did not submit a Response. The Panel notes that the disputed domain name was registered on January 30, 2017. The disputed domain name is not being used.

5. Findings

Complainant established that it had rights in the mark contained in the disputed domain name. Disputed domain name is confusingly similar to Complainant's protected mark,

Respondent has no rights to or legitimate interests in the disputed domain name, and Respondent registered and used the disputed domain name in bad faith.

6. Discussions

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, Inc.*, FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) (“In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.”).

A) Identical / Confusingly Similar

Complainant uses the SAMSUNG mark in connection with its business of providing investment strategies and vehicles to its retail, institutional, and high net worth clients around the world. Complainant has registered the SAMSUNG mark with the KIPO (Korean Intellectual Property Office) (e.g., Reg. No. 410,197,426 covering classes of services 35, 38, 41, 42 registered Oct.7, 2014; Reg. No. 410,025,163 covering class of services 45 registered Oct.26, 2015; Reg. No. 410,024,777 covering class of services 42 registered Sep.24, 2003), which establishes rights in the mark. The general consensus is that KIPO or USPTO registrations are sufficient in conferring rights in a mark under Policy ¶ 4(a)(i). *See T-Mobile USA, Inc. dba MetroPCS v. Ryan G Foo / PPA Media Services*, FA 1627542 (FORUM Aug. 9, 2015) (finding that Complainant has rights in the METROPCS mark through its registration with the United States Patent and Trademark Office). Therefore, the Panel deems Complainant's evidence of a KIPO registration for the SAMSUNG mark sufficient in establishing rights under Policy ¶ 4(a)(i).

Next, Complainant argues that Respondent's <promo-samsung.com> domain name is confusingly similar to the SAMSUNG mark under Policy ¶ 4(a)(i). Complainant contends that Respondent's domain only differs from the SAMSUNG mark by adding top-level domain and 'promo' being only a generic English term that means 'promotional', which perpetuate a confusing similarity. Panels have agreed that merely adding a generic term to a complainant's mark can still make the domain name confusingly similar. *See Microsoft Corporation v. Thong Tran Thanh*, FA 1653187 (FORUM Jan. 21, 2016) (determining that confusing similarity exists where a disputed domain name contains a complainant's entire mark and differs only by the addition of a generic or descriptive phrase and top-level domain, the differences between the domain name and its contained trademark are insufficient to differentiate one from the other for the purposes of the Policy). Consequently the Panel agrees that Respondent's <promo-samsung.com> is confusingly similar to the SAMSUNG mark pursuant to Policy ¶ 4(a)(i).

B) Rights and Legitimate Interests

Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests. *See Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Forum Aug. 18, 2006) (holding that the complainant must first make a prima facie case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP ¶ 4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); *see also AOL LLC v. Gerberg*, FA 780200 (Forum Sept. 25, 2006) (“Complainant must first make a prima facie showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.”).

The Complainant avers that the Respondent is an entity completely unrelated to the Complainant, and has not been granted any authorization by the Complainant who is the proper rights holder of the Complainant's mark. The Complainant further asserts that the disputed domain name as well as the website to which the disputed domain name is being resolved has not been used at all since its registration, and the Respondent is not using the disputed domain name in good faith to provide goods or services. Therefore, the Respondent has no lawful rights and interests in the registration and possession of the disputed domain name.

Complainant contends Respondent has no rights or legitimate interests in **<promo-samsung.com>**. In support of this assertion, Complainant claims that Respondent is not commonly known by the disputed domain name and Complainant has not licensed or permitted to use the SAMSUNG mark in any respect. Where a response is lacking, WHOIS information can support a finding that the respondent is not commonly known by the disputed domain name. *See Chevron Intellectual*

Property LLC v. Fred Wallace, FA1506001626022 (FORUM July 27, 2015) (finding that the respondent was not commonly known by the <chevron-europe.com> domain name under Policy ¶ 4(c)(ii), as the WHOIS information named “Fred Wallace” as registrant of the disputed domain name). The WHOIS information of record identifies Respondent as “TASIA TAMARA” In addition, failure to establish authorization approval for a Respondent to use Complainant’s mark can be evidence of a lack of rights or legitimate interests in a confusingly similar domain name. *See IndyMac Bank F.S.B. v. Eshback*, FA 830934 (FORUM Dec. 7, 2006) (finding that the respondent failed to establish rights and legitimate interests in the <emitmortgage.com> domain name as the respondent was not authorized to register domain names featuring the complainant’s mark and failed to submit evidence that it is commonly known by the domain name).

The Panel finds that Respondent is not commonly known by the disputed domain name. The Panel is of the view that failure to establish authorization approval for a Respondent to use Complainant’s mark can be evidence of a lack of rights or legitimate interests in a confusingly similar domain name. *See IndyMac Bank F.S.B. v. Eshback*, FA 830934 (FORUM Dec. 7, 2006) (finding that the respondent failed to establish rights and legitimate interests in the <emitmortgage.com> domain name as the respondent was not authorized to register domain names featuring the complainant’s mark and failed to submit evidence that it is commonly known by the domain name). The Panel finds that Respondent is not commonly known by the disputed domain name.

The Panel notes that the disputed domain name remains inactive as a passive holding landing site can evince a lack of a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. *See Bloomberg L.P. v. SC Media Servs. & Info. SRL*, FA 296583 (FORUM Sept. 2, 2004) (“Respondent is wholly appropriating Complainant’s mark and is not using the <bloomberg.ro> domain name in connection with an active website. The Panel finds that the [failure to make an active use] of a domain name that is identical to Complainant’s mark is not a *bona*

fide offering of goods or services pursuant to Policy ¶ 4(c)(i) and it is not a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶ 4(c)(iii).”). According to the screenshot of the website to which the disputed domain name is resolved, Respondent’s disputed domain name redirect users to a website that displays a various SAMSUNG related promotional websites and images of SAMSUNG products indicating that the website resolved by the disputed domain name lacks actual content. Accordingly, the Panel agrees with Complainant’s assertions and finds that the disputed domain name is not a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) nor are they a legitimate noncommercial or fair use of the domain names pursuant to Policy ¶ 4(c)(iii).”).

C) Bad Faith

The Complainant contends that the registration of the disputed domain name, followed by a passive holding of the disputed domain name, constitutes ‘use in bad faith.’ The Panel agrees that the passive holding of a domain name does not necessarily circumvent a finding that the domain name is being used in bad faith within the requirements of paragraph 4(a)(iii) of the Policy. *See Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 (finding that in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the panel must give close attention to all the circumstances of the respondent’s behavior, and a remedy can be obtained under the Policy only if those circumstances show that the respondent’s passive holding amounts to acting in bad faith.)

The particular circumstances of this case that the Panel has considered are:

i) After the Complainant’s group company first started its business under the name of Samsung Sanghoe in Daegu in March 1938, it was then incorporated in June 1941 and changed its company name to Samsung Corporation in January 1951. In addition, Samsung Electronics Industries, the predecessor of the Complainant, was established on January 13, 1969, which was listed on the stock exchange in 1975 and came to

have the present trade name of the Complainant in February 1984. Since then, the Complainant's group company has grown into a global conglomerate company, which comprises numerous affiliated businesses with the Complainant;

ii) The Complainant's mark 'SAMSUNG,' which is the company name/trademark of the Complainant's group company, has been widely used all over the world for a long period of time as the mark to represent not only the Complainant but also goods and services of each of its subsidiary companies, and thus it is a world widely well-known mark;

iii) WIPO's UDRP previous cases have also recognized the facts that the mark 'SAMSUNG' is well-known mark around the world and the Complainant is the lawful rights holder of the mark 'SAMSUNG,' and have issued numerous decisions that ordered the cancellation or transfer of the domain names combining 'SAMSUNG' and other marks; and

iv) Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name.

Taking into account all of the above, the Panel concludes that Respondent's passive holding of the disputed domain name constitutes bad faith under Policy, paragraph 4(a)(iii) and that Respondent is using the disputed domain name in bad faith.

The Complainant additionally asserts that in light of the reputation of the Complainant's SAMSUNG mark, it is unlikely that the Respondent with no rights or lawful interest in the disputed domain name coincidentally registered the disputed domain name that is confusingly similar to the Complainant's mark without the knowledge of the Complainant's mark, and thus it is clear that the Respondent registered the disputed domain name for the unlawful purposes, such as unjust enrichment by taking advantage of the reputation and fame of the Complainant's mark.

The Panel infers from the notoriety of Complainant's mark and the manner of use of the disputed domain name (passive holding) by Respondent that Respondent registered disputed domain name <**promo-samsung.com**> with actual knowledge of Complainant and its rights to the Complainant's SAMSUNG mark, and thus demonstrating bad faith under Policy ¶ 4(a)(iii).

6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <**promo-samsung.com**> domain name be **TRANSFERRED** from Respondent to Complainant.

Ho-Hyun Nahm
Sole Panelist

Dated: September 1, 2017